SUNGEI TUKANG RUBBER CO. BHD.

v.

THE GOVERNMENT OF THE STATE OF KEDAH

HIGH COURT MALAYA, ALOR SETAR
SYED AGIL BARAKBAH J
[CIVIL SUIT NO. 184 OF 1974]
27 APRIL 1980

LAND LAW: *Non-payment of quit rent - Forfeiture proceedings - Notice of demand in Form 6A of National Land Code not served on registered proprietor - Section 97 of National Land Code - No attempt made to serve - No evasion or attempt to evade service - Effect of non-service of Form 6A - Whether order of forfeiture nullity.*

CIVIL PROCEDURE: *Declaration - By landowner for order of forfeiture to be null and void - Preliminary objection by State Legal Adviser for proceeding by writ instead of s. 134(1) National Land Code - Whether court can exercise its inherent equitable jurisdiction to set aside order of forfeiture.*

The plaintiff, a public limited company, was the registered proprietor of a piece of land situated in the state of Kedah (hereinafter "the land").
A notice in Form 6A of the National Land Code 1965 (hereinafter "the code") addressed to the plaintiff was inserted in the State Government Gazette, requiring the plaintiff to pay , inter alia, a sum for arrears for quit rent for the land within 3 months from the date of service of the notice.

After a lapse of three months the defendants initiated forfeiture proceedings in respect of the said land. At about this time the beneficial owner of the land and then the plaintiff came to know of the gazette notification. The beneficial owner tendered the required sum to pay off the arrears but this was rejected. The forfieture was gazetted in the State Government Gazette. The beneficial owner of the land and the plaintiff applied in writing for the annulment of the said forfeiture pursuant to s.133 of the code. All applications were rejected.

The plaintiffs claim that the said forfeiture is null and void on the grounds, inter alia, that no notice of demand in Form 6A of the code was at any time served on the plaintiff personally at its usual place of business or registered office in pursuance to s.97 of the code. No attempt was made at any time to serve the same in the manner prescribed in s. 431 of the code. Therefore the service by means of the said gazette notification was accordingly nullified.

The defendants maintain that they were not aware of the plaintiff's usual place of business, attempts made to serve it to the plaintiff personally was without sucess, therefore the forfeiture was proper and valid. The defendants futher raised a preliminary objection on the procedure adopted by the plaintiff by way of filing a writ instead of that as provided by s.134(1) of the code i.e. by way of appeal.

Held:

[1] The Court agrees with the plaintiff's contention that the order of forfeiture by the Collector does not exist as an order at all and the plaintiff is not obliged to appeal as required by s. 134(1). The Court is therefore of the view that sub-section (1) of s. 134 of the Code does not arise.

[2] It is clear that the intention of Parliament is that whatever method of service is adopted the notice and contents thereof must reach the person or body concerned either directly or indirectly before any further steps such as forfeiture could be taken. The most effective service would be to serve the notice on the registered office of the plaintiff company whose address was easily obtainable from the Registrar of Companies.

[3] There is ample authority for holding that failure to serve process where service of process is required does not amount to a mere irregularity but a nullity which goes to the root of our conception of the proper procedure for litigation. For the present case suffice it to hold that the notices including the *Gazette* notification were a nullity on the ground of non-service and it follows that the order of forfeiture was null and void on the ground that such order does not exist at all. On this ground the plaintiff should succeed.

[4] The Court was of the view that the Court has the power to exercise its inherent equitable jurisdiction to grant relief against forfeiture, notwithstanding s. 237 which makes specific provision for the granting of relief against forfeiture in cases of leases and tenancies and which does not apply in this case.

[5] The beneficial owner as soon as he learnt of the *gazette* notification regarding the forfeiture of the said land he negotiated for payment of arrears of rent which was turned down and subsequently filed petitions for annulment which were rejected. He has therefore shown willingness and ability to pay up the arrears of rent including any penalty which be imposed by the State Authority.

[6] In all circumstances the Court was of the opinion that this is a proper case where the Court should exercise its inherent equitable jurisdiction by granting the relief sought.

[Judgment for the plaintif.]

(1) Forfeiture set aside upon payment of all the quit rent due and any money payable by way of penalty together with costs of the defendant to be borne by the beneficial owner within a period of 6 months from the date of order.

(2) Proper transfer of the said land to be made by the plaintiff to the beneficial owner the cost of which is also to be met by the beneficial owner.

(3) Plaintiff's claim for damages under the s. 134(4) of the code does not arise.

Cases referred to:
Anisminic v. Foreign Compensation Commission and Another. [1969] All ER 208
Har-Shefi v. Har-Shefi [1953] 1 All ER 783
Barnard v. National Dock Labour Board [1953] 2 QB 18
A.P.T. Pelajaran Nasional Indonesia v. Joo Siang & Co. Ltd. [1958] 24 MLJ 113
Craig v. Kanssen [1943] 1 KB 256
Shiloh Spinners v. Harding [1973] 1 All ER 90
Wilkins & Ors. v. Kannamal & Anor. [1951] MLJ 99

Legislation referred to:
Civil Law Act 1956, s. 3(1)
Matrimonial Causes Rules 1950 [UK], r. 80
National Land Code Act 56/1965, ss. 13(2), (3) 94, 95, 97 100, 130, 131(a), 132 (2), 133(2), (3), 134(1), (2), (4), 418, 431(1)(b)(ii), (c), (d), (e), 432, 433

For the plaintiff - W.S.W. Davidson
For the defendant - State Legal Adviser, Kedah

JUDGMENT

Syed Agil Barakbah J:

The plaintiff is a public limited company incorporated in Malaysia under the Companies Ordinance 1940-46 having its registered office and usual place of business at No. 52 Jalan Ampang, Kuala Lumpur. At all material times up to 25 September 1971 the plaintiff was the registered proprietor of a piece of land under Surat Putus 1642, Lot No. 3 situated in the Mukim of Sungei Patani, District of Kuala Muda in the State of Kedah, having an area of 153 relongs 375 jembas (109 acres, 1 rood and 17.0 poles)(hereinafter referred to as "the said land"). On 18 February 1971 the Collector of Land Revenue, Kuala Muda, Kedah in pursuance of the instructions of the Registrar of Titles dated 16 January 1971 caused to be inserted in the State Government Gazette a notice in Form 6A of the National Land Code (hereinafter called "the Code") purportedly addressed to the plaintiff co. Messrs. Ong Huck Lim & Co, 16A, Beach Street, Penang requiring the plaintiff to pay the sum of RM2,774.50 being quit rent due i.e. RM1,259.30 for the year 1970, RM1,513.20 for the years 1968 and 1969 and RM2 being notice fee, within three months from the date of service of the said notice. The *gazette* notification came to the attention of one Datuk Dr. M. Mahadevan (PW4) on or about 1 August 1971. PW4 has a beneficial interest in the said land derived from the plaintiff. Shortly after, he tendered payment of the said arrears to the defendant but it was turned down. The plaintiff, on the other hand, came to know of the *gazette* notification on or about 25 September 1971 from a letter received from the solicitors representing the said Datuk Dr. M. Mahadevan. It is alleged that until the dates stated above neither the plaintiff nor Datuk Dr. Mahadevan were aware that the defendants had initiated forfeiture proceedings in respect of the said land. The forfeiture was endorsed by the Registrar of Titles Kedah on the registered document of title to the said land on 25 September 1971. The said forfeiture was subsequently *gazetted* in the State Government *Gazette* on 28 October 1971. On 27 October 1971 the plaintiff through its solicitors applied in writing to the defendants for the annulment of the said forfeiture pursuant to s. 133 of the Code. The application was rejected on 3 March 1973. Thereafter further written applications for annulment of the said forfeiture were made by Datuk Dr. M. Mahadevan but all were rejected, the final being rejected on the 31 July 1974.

The main ground in support of the plaintiff's claim is that the said forfeiture is null and void on the grounds *inter alia*:

(a) that no notice of demand in Form 6A of the Code was at any time served on the plaintiff pursuant to s. 97 of the Code either at the plaintiff's usual place of business or registered office nor on the caveator;

(b) while at all times the said notice could without difficulty have been served personally on the plaintiff at its usual place of business or registered office aforesaid no attempt was made to serve the same in the manner prescribed in s. 431 of the Code or at all. There was no evasion or attempt at evasion of service by the plaintiff.

(c) The said direction of the Registrar dated 16 January 1971 purportedly directing service by means of the said *gazette* notification was accordingly nullified.

It was further alleged that as a consequence of the defendants' act of purporting to forfeit the said land and refusing to annul such forfeiture, the plaintiff has been wrongfully deprived of the said land use and benefit thereof and has thereby suffered loss and damage. Since becoming aware of the said forfeiture proceedings, the plaintiff has at all times been willing

and able to pay up all arrears of quit rent in respect of the said land. The plaintiff therefore prays that the said forfeiture by the defendants be declared null and void, that the plaintiff is still the true and lawful proprietor of the said land, for further or other orders as may be necessary to give effect to the declarations made by this Court and for all other necessary and consequential orders; in the alternative, for an order that in the exercise of the Court's inherent equitable jurisdiction, the purported forfeiture be set aside upon conditions as the Court deems fit. This prayer was added on the application of the plaintiff's counsel and on there being no objection by the legal adviser who appeared for the defendants during the continuation of the hearing. Further, or in the alternative the plaintiff claims damages and costs.

The defendants in their pleadings, apart from admitting that the plaintiff is a public limited company and other material allegations, recognised the plaintiff as the registered proprietor of the said land at all material times until the date of forfeiture but maintained that they were not aware of the plaintiff's usual place of business at No. 52 Jalan Ampang, Kuala Lumpur and denied that the arrears due amounting to RM1,259.30 was for the year 1971. They also maintained that the forfeiture was proper and valid on the ground that notice in Form 6A had not only been complied with but duly served and attempts had been made to serve it to the plaintiff personally but without success. In the circumstances therefore the plaintiff had not been wrongfully deprived of the said land. They also maintained that after the forfeiture, the land reverted to and vested in the State Authority as state land, freed and discharged from all titles and interests subsisting or capable of arising immediately before the forfeiture took effect under s. 131(a) of the Code and any item of land revenue then due to the State Authority in respect of the said land was extinguished. The plaintiff only attempted to pay arrears due after the said land had been lawfully forfeited.

There are three main issues *viz*:

(1) Whether the forfeiture of the said land is a nullity in the circumstances of the case or if not, whether it is an irregularity of significant nature under s. 134 (2) of the Code;

(2) Alternatively, whether the Court can exercise its inherent equitable jurisdiction;

(3) As alternative to (1) and (2) above, whether the plaintiff has a right to damages against the defendants by virtue of s. 134(4) of the Code.

At the commencement of the proceeding a preliminary objection was raised by the legal adviser relating to the procedure adopted by the plaintiff by way of filing a writ instead of that as provided by s. 134(1) of the Code.

It was argued that in view of the said provision the Court has to decide whether a suit for declaration amounts to an appeal intended by the sub-section and if so then the jurisdiction of the Court is ousted because of the non-compliance with the sub-section. However, he agreed that evidence ought to be heard as a matter of convenience and thereafter the Court still has a right to make a ruling on the objection.

Now, the provisions relating to rent are provided under Part Six, Chapters 1 and 2 of the Code. Sections 94 and 95 require the proprietor of any alienated land or any one on his behalf to pay the rent reserved in respect of the said land at the office of the Collector or such other place as may be prescribed. Such rent is payable as from the beginning of the calendar year in which the land is alienated. However, if it is alienated after the end of September in that year, it is payable as from the beginning of the calendar year next following.

The rent payable in respect of any calendar year falls due in full on the first day of that year and if not sooner paid, is treated as in arrear on the first of June of that year. In such a case under s. 97 the Collector has the power to cause to be served on the proprietor of the land a notice of demand and by virtue of s. 100 he is empowered to declare the land forfeit to the State Authority if the whole sum as stipulated in the notice has not been tendered to him within the time specified therein. Section 130 requires the Collector soon thereafter to publish a notification of such forfeiture in Form 8A in the *Gazette*. Copies of such notification will be affixed at conspicuous places as required by s. 433. The effect of the forfeiture renders the land in question to revert to and vest in the State Authority as State land including any buildings existing thereon subject to s. 47, freed and discharged from all titles and interest subsisting as capable of arising immediately before the forfeiture. Any item of land revenue then due to the State Authority in respect thereof is thereby extinguished (see s. 131). It is provided by s. 132(2) that after the expiry of the appeal period under s. 418 i.e. after three months or the determination period on appeal, the State Authority has discretionary power to annul the forfeiture on a petition in that behalf by the proprietor of the land immediately before the forfeiture and realienate the land to him at any time subject to sub-sections (2) and (3) of s. 13 which states:-

> (2) The State Authority may in its absolute discretion refuse or allow any petition under this section, and if it allows the petition, may do so conditionally upon payment by the petitioner -
>
> (a) If the forfeiture was for nonpayment of rent, of such penalty, not exceeding six times the sum, which he was required to pay by notice of demand served on him under s. 97, as the State Authority may think fit to impose;
>
> (b) ...

Sub-section (3) provides wider power of absolute reconsideration:

> (3) The refusal of any petition under this section shall not be taken to prejudice the power of the State Authority to re-alienate the land to the previous proprietor at any time; and, for the purposes of any such re-alienation, the State authority shall, at any time when it gives approval thereto, re-determine as it may consider appropriate, the various matters specified in sub-section (2) of s. 79.

Considering the above it seems clear that there are two courses open to the plaintiff as Gill CJ (as he then was) said in *United Malayan Banking Corporation Berhad v. Pemungut Hasil Tanah, Kota Tinggi* (Originating Motion No.42 of 1977 unreported).

> First, he can petition the State Authority under s. 133(2)(a) of the Code for the annulment of the forfeiture and the State Authority may, in its discretion, allow the petition conditional upon the making of such payment as may be required of him. Furthermore, as provided by s. 133(3) the refusal of any petition for the annulment of the forfeiture shall not be taken to prejudice the power of the State Authority to re-alienate the land to the previous proprietor at any time .... It is for this reason the company has chosen the second course open to it under s. 134(1) of the National Land code in conjunction with s. 418 of the Code.

It seems clear that after the first refusal it is still open to State Authority to re-alienate the said land to the plaintiff. The plaintiff has chosen the first course but has not resorted to the second course under s. 134(1) of the Code which was also open to him.

The section states:-

> 134. (1) The validity of any forfeiture under this Act shall not be challenged in any Court except by means of, or in proceedings consequent upon, an appeal under s. 418 against the order of the Collector under s. 100 or, as the case may be, s. 129; and, notwithstanding anything in any other written law, no such appeal shall be commenced after the expiry of the period of three months allowed for the bringing thereof by the said s. 418.
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> (2) No order of the collector under ss. 100 or 129 shall be set aside by any Court except upon the grounds of its having been made contrary to the provisions of this Act, or of there having been a failure on the part of the Collector to comply with the requirements of any such provision; and no such order shall be set aside by reason only of any irregularity in the form of service of any notice under Chapter 2 of Part Six or, as the case may be, Chapter 5 of Part Seven unless, in the opinion of the court, the irregularity was of a significant nature.
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> (3) In any such appeal or other proceedings as are mentioned in sub-section (1) it shall be presumed until the contrary is proved that all notices required to be served under Chapter 2 of Part Six or, as the case may be, Chapter 5 of Part Seven where duly and regularly served.
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> (4) The provisions of sub-section (1) shall not affect the right of any person or body to bring an action of damages against the State Authority, or (subject to the provisions of s. 22) against any officer appointed by the State Authority, in respect of any act or thing wrongfully done, or ordered to be done or omitted to be done, in connection with any forfeiture under this Act.

Now, the plaintiff says that it is not challenging the validity of the forfeiture but the purported order of the Collector on the ground that the required notice which is a condition precedent to making such order, has not been served on the plaintiff as required by s. 431 of the Code and therefore a nullity. In the circumstances the plaintiff contends that the procedure by way of appeal as provided in sub-section (1) of s. 134 does not apply.

The relevant principle is enunciated by Lord Reid in *Anisminic v. Foreign Compensation Commission and Anor.* [1969] All ER 208 at p. 212. His Lordship states, *inter alia*:-

> The next argument was that, by reason of the provisions of s. 4(4) of the Act of 1950 The Foreign Compensation Act 1950, the Courts are precluded from considering whether the commission's determination was a nullity, and, therefore, it must be treated as valid whether or not enquiry would disclose that it was a nullity. Section 4(4) is in these terms:
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> > The determination by the Commission of any application made to them under this Act shall not be called in question in any Court of law.
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> The commission maintain that these are plain words only capable of having one meaning. Here is a determination which is apparently valid; there is nothing on the face of the document to cast any doubt on its validity. If it is a nullity, that could only be established by raising some kind of proceedings in Court. But that would be calling the determination in question, and that is expressly prohibited by the statute. The appellants maintain that that is not the meaning of the words of this provision. They say that 'determination' means a real determination and does not include an apparent or purported determination which in the eyes of the law has no existence because it is a nullity. Or, putting it in another way, if one seeks to show that a determination is a nullity, one is maintaining that it does not exist as a determination. It is one thing to question a determination which does not exist; it is quite another thing to say that there is nothing to be questioned.
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> Let me illustrate the matter by supposing a simple case. A statute provides that a certain order may be made by a person who holds a specified qualification or appointment, and it contains a provision, similar to s. 4(4) that such an order made by such a person shall not be

called in question in any Court of law. A person aggrieved by an order alleges that it is a forgery or that the person whom made the order did not hold that qualification or appointment. Does such a provision require the Court to treat that order as a valid order? It is well established principle that a provision ousting the ordinary jurisdiction of the Court must be construed strictly - meaning, I think, that, if such a provision is reasonably capable of having two meanings, that meaning shall be taken which preserves the ordinary jurisdiction of the Court.

There is a distinction of course between the ouster clause in the case and that in s. 134(1) of the Code. The former is a complete ouster but the latter limits the challenging of the validity of any forfeiture in the Court by way of appeal. Nevertheless, the plaintiff's contention is that the order of forfeiture by the Collector is, in the eyes of the law non-existent being a nullity. In short he means it does not exist as an order at all and therefore he is not obliged to appeal as required by s. 134(1). With respect I agree. I do not think the distinction between the ouster clauses as stated above affect the application of the principle propounded by the House of Lords in the case cited above. It is applicable with the same force as a remedy for injustice. I am therefore of the opinion that the same principle applies to the present case in that the provision of sub-section (1) of s. 134 of the Code does not arise.

Secondly, it seems this Court has a discretion to entertain an application for a declaratory order by virtue of O. 25 r. 5 RSC which says:

No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not.

The application of this order was discussed in *Har-Shefi v. Har-Shefi* [1953] 1 All ER 783 where it was held by virtue of Rule 80 of the Matrimonial Causes Rules 1950, Divorce Courts in England since 1924 have acquired a jurisdiction to make declaratory orders in the same way as the other Divisions of the High Court, even though no other relief was sought. It therefore had jurisdiction to entertain a petition which sought only a declaration that a foreign decree of divorce was valid.

Again in *Barnard v. National Dock Labour Board* [1953] 2 QB 18 which related to the powers of delegating the Board's quasi-judicial disciplinary functions to the port manager who suspended the plaintiffs the registered dock workers, from work and pay, it was held *inter alia* that the local board has no such power, express or implied, and the decision of the appeal tribunal based on them were equally a nullity. It was also held that in proper cases where persons would otherwise be without remedy for an injustice, the Court has a discretionary power to intervene by way of declaration and injunction in the decisions of statutory tribunals.

On p. 41, Denning LJ (as he then was) said:

... I think there is so much force in Paull's contention so much so that in the vast majority of cases the Courts will not seek to interfere with the decisions of statutory tribunals; but there is power to do so not only be *certiorari*, but also by way of declaration. I do not doubt. I know of no limit to the power of the Court to grant a declaration except such limits as it may in its discretion impose upon itself; and the Court should not, I think, tie its hands in this matter of statutory tribunals. It is axiomatic that when a statutory tribunal sits to administer justice, it must act in accordance with the law. Parliament clearly so intended. If the tribunal does not observe the law, what is to be done? The remedy by *certiorari* is hedged round by limitations and may not be available. Why then should not the Court intervene by declaration and injunction? If it cannot intervene, it would mean that the tribunal could disregard the law, which is a thing no one can do in this country.

Where no special relief is claimed, the jurisdiction should be exercised with great caution.

The main ground which the plaintiff relies is non-service of the notice of demand for rent issued in Form 6A. The methods of service are provided by s. 431 of the Code which states:

> 431.(1)Without prejudice to any other method of service, a notice may be served on a person or body for the purposes of this Act -
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> (a) by delivering the notice to the person; or
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> (b) by delivering the notice -
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> (i) at the person's usual or last known place of abode or business to his servant or to an adult member of his family; or
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> (ii) at the body's registered office or usual or last known place of business to its servant or agent; or
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> (c) by leaving the notice in a cover addressed to the person or body -
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> (i) at the person's usual or last known abode or place of business; or
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> (ii) at the body's registered office or usual or last known place of business; or
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> (d) by sending the notice by prepaid registered post to the person or body at an address for service given in pursuance of any provision of this Act or, where no such address has been given -
>
> (i) at the person's usual or last known abode or place of business; or
>
> (ii) at the body's registered office or usual or last known place of business; or
>
> (e) by substituted service in accordance with s. 432.

Section 432 provides:

> 432. (1) The Registrar, where he is satisfied that a notice affecting land in the State cannot be served personally or by post (either because the person to be served is evading service or for some other reason), may order service to be affected -
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> (a) by affixing a copy of the notice in a conspicuous position -
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> (i) on the land; and
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> (ii) on a court-house, mosque or penghulu's office or balai, or in a market or other public place, in the area in which the land is situated; and
>
> (b) by publishing a copy of the notice in the *Gazette* and, if he thinks fit, in one or more of the newspapers circulating in the State.
>
> (2) For the purposes of sub-section (1) a notice relating to a document of title to any land shall be deemed to be a notice affecting the land.

From the evidence adduced, notice was first sent to the plaintiff c/o. M/s. Ong Huck Lim & Co., Advocates and Solicitors, No. 16-A, Beach Street, Penang (Ex. A p. 2). An endorsement to the left of the signature of the Collector of Land Revenue, Kuala Muda, probably written by the process server, states "Lawyer Huck Lim said he could not accept service of the notice because it was difficult to contact person concerned." According to the C.L.R., Kuala Muda (PW2) the said notice was returned to the Land Office unserved on 15 September 1970. It would appear that the Land Office, Sg. Patani was under the impression that M/s. Ong Huck Lim was the plaintiffs' solicitors because of a letter from the firm dated 1 May 1967 (Ex. A p. 1). It states that the firm acted for the sub-purchasers of the lands in respect

of Surat Putus No. 1642, 3560 & 2589, Mukim Sg. Patani, District of Kuala Muda and requested for information of the amount of quit rent for the year 1967 due to each and every title deed. It is clear from the evidence of Nga Hock Cheh (PW1), the legal assistant in m/s Presgrave and Matthews, No. 2, Beach Street, Penang that according to record in the firm, negotiation took place sometime in October 1964 for the purchase of certain lands in Sg. Tukang Estate in which m/s Ong Huck Lim & Co., acted for the purchasers and m/s Presgrave and Matthews, for the plaintiff company, until and including the year 1971. An agreement was prepared and executed between the purchasers i.e. Mahalingam Ratnavale and Nagappa Rengasamy Pillai on the one part and H.T. Grumit, the then Director of the plaintiff company on the other. (See Ex. P1). The land in dispute is included in the schedule to the said agreement. There appeared to be some delay in the transfer of the lands since one of the purchasers, Rengasamy Pillay, was adjudged a bankrupt. The purchase was subsequently completed on 21 March 1965. The total area of the land was 1642 acres 1 rood 12.3 poles and were re-sold to various purchasers. It is apparent that M/s. Ong Huck Lim & Co.never at any time acted as solicitors for the plaintiff but for the purchasers and sub: - purchasers. A fundamental error was therefore made by the Land Office, Sg. Patani, albeit in good faith, by sending the notice to be served on the plaintiff based on the misconception of the letter from the said firm as mentioned earlier. That was confirmed by PW2 and the former CLR Hashim bin Abdul (DW1).

The registered office of the plaintiff as from 1 July 1969 was c/o. Messrs. Barlow Boustead Estates Agency Sdn. Bhd., 52, Jalan Ampang, Kuala Lumpur. (See Ex. C) and as from 21 June 1971, at No. 50, Jalan Ampang, Kuala Lumpur. (See. Ex. D). No notice was delivered at any of the registered office to the plaintiff's servant or agent as required under sub-section (1)(b)(ii) of s. 431. Had the Land Officer made inquiries from the Registrar of Companies, he would have easily been informed of the registered office of the plaintiff company and service of the notice could have been made accordingly. Such failure was admitted by DW1, the Collector at the material time. He, however, contended that Land Officers were not required to go to the extent of finding out the actual addresses of registered owners but could act on the last known address as stated in the title deed and the Land Roll. Further, notices could always be served by substituted service. He may be right in regard to general application in normal circumstances, since Land Offices have to issue thousands of notices to registered owners for non-payment of rent it will add to the already heavy burden if such a procedure is adopted in every case of non-payment. Be that as it may, in exceptional cases of the nature as the present one, where a registered company which has all along been prompt in its remittance suddenly fall in arrears due to the sale of the land in dispute and ordinary methods of serving notices cannot be made, he ought to have made such inquiry. The need for such is shown by the failure of the Notice Server (DW4) to serve the required notices under s. 431(1)(b)(ii) i.e. by delivering them at the company's registered office or usual or last known place of business to its servant or agent, and under sub-section (1)(c)(ii) i.e. by leaving the said notices in a cover addressed to the company at its registered office or usual last known place of business. According to DW4 in the year 1968, he made two attempts to serve, once on the land itself and the second at the plaintiff company's office at Sg. Tambang. In 1970, he made three similar attempts, once on the land itself, and the rest, at the company's office but found it closed with no one present on all those occasions. From inquiries he learnt that the manager was no longer there. He did not know that the estate had been fragmented and sold to others. He accordingly made the required entries in his diary which however, he had destroyed after his retirement sometime in 1972. It is pertinent to note that the notices according to the Collector, DW2, bore the address of the plaintiff c/o. M/s. Ong Huck Lim & Co. No evidence was adduced that notice was placed in a cover addressed to

the plaintiff company as required under sub-section (1)(a). He also agreed that there was no record in the relevant file regarding the Notice server's verbal reports of the futile attempts at service and that he was merely relying on memory. Because of the futile attempts, he applied to the Registrar of Titles, Kedah, (DW3) for permission to have the notice served by substituted service under s. 432 as allowed by sub-section (1)(e) of s. 431 i.e. the last alternative method without resorting to sub-section (1)(d) i.e. by sending the notice by prepaid registered post to the company's registered office or usual or last known place of business. I do not consider it wrong for DW2 to abandon this method particularly when s. 431 allows him any other method of service than those expressedly provided therein. Nevertheless it is clear that the intention of Parliament is that whatever method of service is adopted the notice and contents thereof must reach the person or body concerned either directly or indirectly before any further steps such as forfeiture can be taken. By then in normal circumstances DW2 ought to have realised that the most effective service would be to serve the notice on the registered office of the plaintiff company. The address was easily available had he written to the Registrar of Companies and any attempt by substituted service and publication in the *Gazette* which involves more work, time and expenses could have been avoided.

In regard to substituted service the Registrar (DW3) acted on the strength of DW2's letter (Ex. A p. 3) and maintained that he gave the necessary instruction for such service under s. 432 of the Code. I disallowed the plaintiff's Counsel to cross-examine DW3 as to the basis on which he acted in order to be satisfied that a notice effecting the said land could not be served personally or by post on the ground of DW2's letter which explains the reason as required under the section. Nevertheless the discretion to order substitute service must be made by the Registrar himself and not the Collector who is not empowered by sub-section (1) of the section. Strange as it seems, the Registrar, instead of making the order as contended by him, indicated otherwise in his letter to DW2. (See Ex. P1 p. 4) which states *inter alia* that he made the order to effect service of the notice by substituted service under s. 432 of the Code "if you (DW2) are (have been) satisfied that the notices issued previously could not be served effectively." To my mind the Registrar's order was made conditional upon the Collector's satisfaction and not his own as required by sub-section (1). The section requires him to make a clear-cut order and not a conditional one, once he is satisfied that the notice cannot be served personally or by post for the reasons stated therein. In the circumstances there appears to be no valid order at all.

As regards the legal effect of the failure to adopt proper method of service, I am in agreement with Rigby, J (as he then was) in *A.P.T. Pelajaran Nasional Indonesia v. Joo Siang & Co. Ltd.* [1958] 24 MLJ 113 wherein it was held *inter alia*:

> where the law provides a particular method or form of procedure for affecting service, or a particular place at which, or to which, service may be affected, then there must be strict compliance with those provisions, and the Court would set aside a judgment obtained by default where the requirements have not been complied with.

In that case, the plaintiff company having obtained the address of the registered office of the defendant company from the Registrar of Companies on two occasions, thereafter sent notice of action and later a writ of summons demanding payment of money allegedly due from the defendant to the plaintiff who later obtained judgment by default for the said sum. The judgment was subsequently set aside by the Court because of the mistake of the Registrar in providing the wrong address; the defendant company having failed to inform him of their change of address. It was held that the defendant company had not been served

with the writ of summons at its registered office although they were aware of it, the purported service was therefore bad and all proceedings thereafter were bad and the judgment obtained in default of appearance was accordingly a nullity.

There is ample authority for holding that failure to serve process where service of process is required does not amount to a mere irregularity but to a nullity "which goes to the root of our conception of the proper procedure for litigation. (See *Craig v. Kanssen* [1943] 1 K.B. 256, 262, 263). In that case Lord Greene M.R. said:

> ... That refers us to O. LXVII r. 2, which, in case where personal service is not requisite, provides that service will be sufficient if the document to be served is left at the address for service of the person to be served, or if it is posted in a prepaid registered envelope addressed to the person to be served at that address. In the present case, as appears from the affidavit of service, the summons was not sent to the address for service of the defendant, so the rule was not complied with and the alleged service mentioned in the affidavit was no service at all. It was clearly a mistake and there can be no suggestion of bad faith, but there was no Warrant or justification in the Rules of Court for obtaining the order of 18 January 1940 in such circumstances. The order is a nullity, and it must be set aside.

Further it is also ruled that in such a case, the Court can set aside such an order in its inherent jurisdiction and it is not necessary to appeal from it.

Although the above authorities refer to methods of service provided by the Rules of Court, the principles apply to the methods stated in the Code. Both expressedly provide the ways of effecting service which are much wider in the Code. Besides there is another provision at s. 134(2) which allows the Court to set aside an order of the Collector under s. 100 (i.e. order of forfeiture for non-payment of rent), on the ground of irregularity which in the Court's opinion is of a substantial nature in the form or service of any notice under the relevant provisions of the Code. I think the provision relates to an appeal under sub-section (1) in view of sub-section (3) which presumes that all notices required to be served were duly and regularly served, in such appeal. I do not propose to discuss whether the second principle stated in *Craig v. Kanssen* ought to apply.

For the present suffice it to hold that the notices including the *Gazette* notification are a nullity on the ground of non-service and if follows that the order of forfeiture is null and void on the ground that such order does not exist at all. On this ground the plaintiff should succeed.

The second ground is whether the Court can exercise its inherent equitable jurisdiction to set aside the order of forfeiture of the said land. In *United Malayan Banking Corporation Berhad v. Pemungut Hasil Tanah, Kota Tinggi,* (*supra*) Gill CJ (as he then was) applied equitable principles when he set aside a similar order of forfeiture by the Collector which, however, was challenged by way of appeal under s. 418 of the Code. His Lordship accepted the contention that s. 134 of the Code does not exclude the rules of equity under s. 3(1) of the Civil Law Act 1956, which have been applied in the Courts in Malaysia in various cases involving the Torrens System including our National Land code. He cited several authorities in support thereof.

In the present case however, as stated earlier, the main ground is not based on challenging the validity of the forfeiture but that the order was a nullity. In such a case the Court may exercise its inherent jurisdiction without the necessity of an appeal. (See *Criag v. Kanssen, supra.*)

The principles of equitable intervention by the Court have been stated in a number of cases. Suffice it for me to quote *Shiloh Spinners Ltd. v. Harding* [1973] 1 All ER 90 100 in which Lord Wilberforce said:-

> There cannot be any doubt that from the earliest times Courts of equity have asserted the right to relieve against the forfeiture of property. The jurisdiction has not been confined to any particular type of case. The commonest instances concerned mortgages, giving rise to the equity of redemption and leases, which commonly contained re-entry classes; but other instances are found in relation to copyholds, or where the forfeiture was in the nature of a penalty. Although the principle is well established, there has undoubtedly been some fluctuation of authority as to the self limitation to be imposed or accepted on this power. There has not been difficulty as regards two heads of jurisdiction. First, where it is possible to state that the object of the transaction and of the insertion of the right to forfeit is essentially to secure the payment of money, equity has been willing to relieve on terms that the payment is made with interest, if appropriate, and also costs (*Peachy v. Duke of Somerset* and cases there cited. (13)). Yet even this head of relief has not been uncontested; Lord Eldon LC in his well known judgment in *Hill v. Barclay* (14) expressed his suspicion of it as a valid principle, pointing out, in an argument which surely has much force, that there may be cases where to obliged acceptance of a stipulated sum of money even with interest, at a date when receipt had lost its usefulness, might represent an unjust variation of what had been contracted for (see also *Reynolds v. Pitt* (15)). Secondly, there were the heads of fraud, accident, mistake or surprise always a ground for equity's intervention, the inclusion of which entailed the exclusion of mere inadvertence and a *fortiori* of wilful defaults.

After dealing with some contrary pronouncements His Lordship goes on to say at p. 101:

> I would fully endorse this: it remains true today that equity expects men to carry out their bargains and will not let them buy their way out by uncovenanted payment. But it is consistent with these principles that we should reaffirm the right of Courts of equity in appropriate and limited cases to relieve against forfeiture for breach of covenant or condition where the primary object of the bargain is to secure a stated result which can effectively be attained when the matter comes before the Court, and where the forfeiture provision is added by way of security for the production that result. The word `appropriate' involves consideration of the conduct of the applicant for relief, in particular whether his default was wilful, of the gravity of the breaches, and of the disparity between the value of the property of which forfeiture is claimed as compared with the damage caused by the breach.

In the case of the National Land Code which adopts the Torrens System, Taylor J, in *Wilkins & Ors. v. Kannamal & Anor.* [1951] MLJ 99, 100 has this to say:

> The Torrens Law is a system of conveyancing; it does not abrogate the principles of equity; it alters the application of particular rules of equity but only so for as necessary to achieve its own special objects.

Taking into consideration the above authorities I am of the view that this Court has the power to exercise its inherent equitable jurisdiction to grant relief against forfeiture, notwithstanding s. 237 which makes specific provision for the granting of relief against forfeiture in cases of leases and tenancies and which does not apply in this case.

The facts show that the plaintiff still remained the registered owner of the said land even after the agreement of sale to the two purchasers and until the order of forfeiture.

According to PW1 the plaintiff paid the quit rent for the said land for the year 1965 and thereafter there was no record of subsequent payments. The reason appears to be the sale was completed on 21 March 1965 by which time the manager of the estate had been requested to pay off the labourers in the estate. Thereafter there was no correspondence between the

manager and the solicitors and no arrangements was made for payments of quit rent. As between the plaintiff and the co-purchaser M. Ratnavale it was reasonable in the circumstances to expect the latter to be responsible thereafter to pay the annual rents. The rent for the years 1966 and 1967 appeared to have been paid as there was no notice demanding such payment from the Land Office. It is not known who had made such payments. Dr. Mahadevan came into the picture sometime in 1970. According to him his elder brother M. Ratnavale fell ill, was hospitalised off and on and later was discovered to be suffering from brain tumour. As a result of a family meeting sometime that year because of his increasing illness PW4 was made responsible to look after the land which was to be his share of his brother's property. Ratnavale died on 9 April 1973 and Dr. Mahadevan became the beneficial owner of the said land. He testified that he made an attempt to visit the land once but found the area being used as a military shooting range and entry was prohibited. In the light of DW4's evidence I think he was mistaken. It could be that he did not know the actual location of the land which was part of a large area subdivided into many lots as a result of fragmentation and most of which had been sold to various sub-purchasers. Thereafter he left the matter to the family solicitors who were then still engaged in the legal dispute between the co-purchasers. In spite of that I would think it was natural in the circumstances for PW4 to expect the solicitors to attend to such matters as payment of rent pertaining to the said land which was also affected by the prolonged legal dispute. By then the rent had fallen into arrears. No doubt PW4 could have made the necessary inquiry at the Land Office since he would be the beneficial owner on his brother's death. To my mind if at all he was negligent he could be said to be guilty of wilful neglect. That can be clearly seen from the facts and the surrounding circumstances including his own official duties which he has to perform and which obviously has kept him well occupied. However as soon as he learnt of the *gazette* notification regarding the forfeiture of the said land he negotiated for payment of arrears of rent which was turned down and subsequently filed petitions for annulment which were rejected. He has therefore shown willingness and ability to pay up the arrears of rent including any penalty which might be imposed by the State Authority. That amount if compared with the value of the said land which is the subject of forfeiture, would well be negligible thus showing a great disparity between the value as compared with the damage caused by the breach which, apart from being technical would sufficiently be met with the payment of penalty and other conditions that the State Authority may impose under the relevant provisions of the Code.

In all circumstances I am of the opinion that this is a proper case where the Court should exercise its inherent equitable jurisdiction by granting the relief sought. In line with the intention of the Code, it should be made in favour of the registered proprietor immediately before the forfeiture took effect i.e. the plaintiff I would therefore make an order for the forfeiture be set aside upon payment of all the quit rent due and any money payable by way of penalty together with costs of the defendants which should be borne by PW4, within a period of 6 months from today and thereafter a proper transfer of the said land be made by the plaintiff to PW4 the cost of which is also to be met by PW4.

In view of the above the third prayer relating to the plaintiff's claim for damages under s. 134(4) of the Code does not arise.

Also found at [1982] CLJ 69